

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL WARNICK and : CIVIL ACTION
PATRICIA WARNICK, h/w :
 :
v. :
 :
HARSCO CORP. :
 :
v. :
 :
SUPERIOR AUTOMOTIVE and :
CENTRAL SALVAGE : NO. 98-4929

MEMORANDUM & ORDER

J.M. KELLY, J.

SEPTEMBER , 1999

Third-party Defendant, Central Salvage, has filed the present Motion to Dismiss, or, in the alternative, Motion for Summary Judgment. Plaintiff, Michael Warnick, brought a claim against Harsco Corporation ("Harsco") for injuries he suffered while unloading a truck loaded with scaffolding. Harsco filed a Third-Party Complaint, seeking indemnification from Warnick's employer, Central Salvage.

Central Salvage contends that Harsco's claim for indemnification is barred by Pennsylvania's statutory worker's compensation scheme. Harsco argues that the contract between Central Salvage and Harsco provides for indemnification and applies in this case. Because the issue before the Court is purely legal, the Court shall review this Motion solely as a motion to dismiss.

RULE 12(b)(6) STANDARD

In considering whether to dismiss a complaint for failing to

state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In light of these standards, motions to dismiss rarely are granted. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 321 (2d ed. 1990). When a contract is attached to a complaint, a defendant may move to dismiss the complaint where the contract clearly prohibits recovery. 5A Wright & Miller, supra, at 347; cf. Flight Sys., Inc. v. Electronic Data Sys., 112 F.3d 124, 127 (3d Cir. 1997); Ala, Inc. v. Ccair, Inc., 29 F.3d 855, 859 n.9 (3d Cir. 1994). The Court therefore may grant Central Salvage's motion if the Agreement states an insuperable barrier to Harsco's recovery.

DISCUSSION

The Pennsylvania worker's compensation scheme provides the exclusive remedy for an employee, against an employer, when the employee is injured in the scope of employment. 77 Pa. Cons.

Stat. § 481(a) (1992). A third party sued by the injured employee may only seek damages, contribution or indemnification from the employer if the right to seek damages, contribution or indemnification is expressly provided for in a prior, written contract. Id. § 481(b). Such a contract must be clear and unequivocal and will be construed against the party seeking indemnification. Snare v. Edensburg Power Co., 637 A.2d 296, 298 (Pa. Super. Ct. 1993). The burden of proving the applicability of an indemnification agreement is upon the party seeking indemnification. Donaldson v. Commonwealth, 596 A.2d 269, 281 (Pa. Commw. Ct. 1991). The burden of showing the applicability of an indemnification clause increases where the party seeking indemnification drafted the indemnification clause. Id.

Harsco relies upon the following indemnification clause in its form contract with Central Salvage, in support of its position that Central Salvage agreed to indemnify Harsco:

It is understood and agreed and except for our sole negligence, you shall indemnify and save us harmless from liability, loss or expense including but not limited to reasonable attorney's fees, on account of injuries to persons, including death or damage to property provided such injuries, death or damage be attributable in whole or in part either to your negligence or failure to comply with the aforementioned requirements, or any negligence or such failures on the part of your agents or subcontractors. In other words, even if we are negligent in part, you shall nevertheless indemnify us as provided above. This indemnification shall be interpreted and applied to the fullest extent permitted by applicable law.

While this indemnification clause purports in broad sweeps

to hold Central Salvage liable to indemnify Harsco for a full range of liabilities, nowhere in this clause is indemnification for injuries to Central Salvage's employees addressed. Rather, Harsco attempts to enforce indemnification under the blanket indemnity set forth in the contract. In the context of employer liability for employee injuries, "blanket indemnity clauses will not create liability." Snare, 637 A.2d at 522. Since the indemnity clause in question does not specifically address liability for injuries to Central Salvage's employees, and given the great burden placed upon Harsco to prove the applicability of the indemnification clause, Central Salvage's Motion to Dismiss shall be granted.

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CENTRAL SALVAGE	:	NO. 98-4929

O R D E R

AND NOW, this day of September, 1999, upon consideration of the Motion to Dismiss, or, in the alternative, Motion for Summary Judgment of Third-party Defendant, Central Salvage (Doc. No. 27), and the Response thereto of Third-Party Plaintiff, Harsco Corp., it is ORDERED that the Motion is GRANTED. The Third-Party Complaint against Central Salvage is DISMISSED.

BY THE COURT:

JAMES MCGIRR KELLY, J.